Moh Chew Leng v Institut Akauntan Malaysia

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S3–24–1080 OF 2003
MOHD HISHAMUDIN J
2 MARCH 2004

Civil Procedure — Action — Commencement — Whether premature — Time to respond to application — Whether defendant must be given reasonable time to respond

The plaintiff submitted an application to the defendant to sit for Malaysian Institute of Accountants Qualifying Examination (MIAQ Examination). There was no reply from the defendant for three weeks. The plaintiff representing 45 others brought this representative action against the defendant for a declaration that she and those named were eligible to sit for the MIAQ Examination by virtue of s 15A(2) of the Accountants Act 1967 in that she and those named were in possession of a qualification relating to accounting recognized by the Public Services Department of Malaysia.

Held, dismissing the action with costs:

(1) The present suit by the plaintiff was premature. The defendant must be given reasonable time to process and evaluate the plaintiff's application and to reply to the plaintiff accordingly in due course. What was reasonable time was difficult for the High Court to prescribe. It depended on the circumstances of the particular case (see para 22).

Obiter:

A statutory public authority has a duty to carry out its functions efficiently and in an expeditious manner. It could not be sluggish. It could not be slow (see para 22).

[**Bahasa Malaysia summary**

Pihak plaintif membuat permohonan kepada defendan untuk menduduki Peperiksaan Institut Akauntan Malaysia ('Peperiksaan MIAQ') tetapi tiada jawapan deberi oleh defendan selama tiga minggu. Pihak plaintif, mewakili 45 orang yang lain, membawa tindakan representasi ini terhadap defendan untuk satu deklarasi bahawa beliau dan yang dinamakan berhak untuk menduduki Peperiksaan MIAQ mengikut s 15A(2) Akta Akauntan 1967 kerana mereka mempunyai kelayakan berkenaan dengan perakaunan yang diiktiraf oleh Jabatan Perkhidmatan Awam Malaysia.

Diputuskan, menolak tindakan tersebut dengan kos:

(1) Guaman semasa oleh plaintif adalah pra matang. Defendan harus diberi masa yang munasabah untuk memproses dan meneliti permohonan plaintif dan untuk menjawab kepada plaintif. Apa yang dimaksudkan dengan masa yang munasabah adalah sukar untuk ditetapkan oleh Mahkamah Tinggi. Ia bergantung kepada keadaan sesuatu kes (lihat perenggan 22).

Obiter:

Sebuah badan berkanun bertanggungjawab untuk menjalankan fungsinya secara efisien dan cepat. Ia tidak harus selekeh. Ia tidak boleh perlahan (lihat perenggan 22).]

Notes

For cases on commencement of action, see *Mallal's Digest* (4th Ed, 2001 Reissue) paras 70–81.
For commencement of proceedings generally, see 1 *Halsbury's Laws of Malaysia* paras [10.2-001]–[10.2-104].

Legislation referred to

Accountants Act 1967 ss 3, 6, 8, 15A(1), (2)
Malaysian Institute of Accountants Qualifying Examination Rules 2002 rr 6, 7

Rabin Devadason (Devadason & Devadason) for the plaintiff.
Porres Royan (Shook Lin & Bok) for the defendant.

Mohd Hishamudin J:

[1] This is a representative action by the plaintiff representing 45 others named in the originating summons against the defendant for a declaration that she and those named are eligible to sit for the Malaysian Institute of Accountants Qualifying Examination ('the MIAQ Examination') by virtue of s 15A(2) of the Accountants Act 1967 ('the Act') in that she and those named are in possession of a qualification relating to accounting recognized by the Public Services Department of Malaysia.

[2] The plaintiff (and so are the 45 others whom she represents in this representative action) is a graduate of the Association of International Accountants ('the AIA'), United Kingdom. On 2 June 2003, she submitted an application to the defendant, the Malaysian Institute of Accountants, to sit for the MIAQ Examination. Under s 15 of the Act, passing the MIAQ Examination is one of the requirements in order for a person to be admitted as a chartered accountant. However, until 23 June 2003, she received no reply on the status of her application. So, on 24 June 2003, the plaintiff and the 45 others filed the present originating summons.

[3] The defendant, that is, the Malaysian Institute of Accountants ('the Institute), is a body corporate established under s 3 of the Act. The Institute consists of chartered accountants, licensed accountants and associate members registered with the Institute as members of the Institute. The functions of the Institute are spelt out in s 6 of the Act and they include:

(a) to determine the qualifications of persons for admission as members of the Institute;

(b) to provide for the training and education of persons practicing or intending to practice the profession of accountancy;

(c) to approve the MIAQ Examination and to regulate and supervise the conduct of that Examination; and

(d) to regulate the practice of the profession of accountancy in Malaysia.

[4] Section 15A(2) of the Act stipulates:

Malaysian Institute of Accountants Qualifying Examination

(2) A person shall only be eligible to sit for the Malaysian Institute of Accountants Qualifying Examination if he possesses a qualification relating to accounting, business or finance recognized by the Public Services Department of the Government or other qualifications approved by the Council.

[5] The Council referred to in the above provision is the Council of the Institute established under s 8 of the Act. The Council consists of, among others, the Accountant General, Malaysia, representatives from the higher educational institutes and the President of the Malaysian Association of Certified Public Accountants.

[6] The Council is the governing body of the Institute. It manages the Institute and the funds of the Institute. It has powers to appoint officers, clerks, agents and servants necessary for the administration of the Institute.

[7] It can be seen from the above sub-s (2) of s 15A that for the purpose of the eligibility to sit for the MIAQ Examination there are only two types of qualification recognized by the Institute, namely:

(a) the 'PSD qualification', that is to say, qualification relating to accounting, business or finance recognized by the Public Service Department ('the PSD'); and

(b) the 'Council qualification', that is to say, qualification, other than the PSD qualification, approved by the Council.

[8] A person intending to sit for the MIAQ Examination must have either one of the above qualifications: either the PSD qualification or the Council qualification. Only these two authorities are given the power by the Act to decide on eligibility of candidates.

[9] For the present case, we are concerned only with eligibility type (a), that is, the PSD qualification eligibility. It is the contention of the plaintiff that by reason of her qualification and s 15A(2) she is eligible to sit for the MIAQ Examination. She relies on two letters from the PSD.

[10] The plaintiff alleges bad faith on the part of the Institute. She avers that she has a strong suspicion that there is (what she described as) a 'hidden agenda' as to why the defendant is reluctant to rule on her eligibility. However, the plaintiff does not substantiate this serious allegation.

[11] Regarding the two PSD letters, the first is dated 3 May 1986 from the PSD to one Encik Azizudin Abdullah of the Association of International Accountants, Taman Melawati, Kuala Lumpur. The title of the letter is:

Penjelasan dari JPA mengenai Kelulusan Association of International Accountants (AIA).

[12] And the body of the letter read:

Merujuk kepada surat tuan bertarikh 15 April 1986 mengenai perkara di atas.

2 Dimaklumkan bahawa pengiktirafan dan penilaian ke atas kelayakan AIA tersebut oleh Kerajaan adalah bertujuan untuk lantikan ke dalam Perkhidmatan Kerajaan, Dengan demikian, penilaian yang diberi ke atas kelayakan tersebut sebagai setaraf dengan Ijazah Sarjana Muda Kepujian adalah untuk mempertimbangkan pemegang-pemegang kelayakan tersebut bagi tujuan lantikan ke jawatan-jawatan yang bersusuaian dalam perkhidmatan Kerajaan yang mensyaratkan kelayakan masuk di peringkat Ijazah Sarjana Muda Kepujian.

3 Justru itu, nilaitaraf yang diberi kepada kelayakan AIA sebagai setaraf dengan Ijazah Sarjana Muda Kepujian meletakkan kelayakan tersebut sama taraf dengan kelayakan Ijazah Sarjana Muda Kepujian yang dikeluarkan oleh universiti-universiti yang diiktiraf oleh Kerajaan. Kelayakan AIA juga boleh dianggap sebagai kelayakan dalam bidang perakaunan kerana silibus kursusnya menekankan kepada bidang perakaunan.

[13] The letter was signed by one Encik Zamani bin Harun of the Urusetia Penilaian dan Pengiktirafan Kelayakan, Bahagian Perjawatan, on behalf of the Director General of the PSD.

[14] It is observed that this letter refers to an earlier letter dated 15 April 1986 written to the PSD by the said Encik Azizudin Abdullah. However, unfortunately, this earlier letter is not exhibited by the plaintiff. Without this earlier letter, this court is in no position to make a proper evaluation of the above letter of May 1986.

[15] The second letter relied upon by the plaintiff is a letter from the Cawangan Pengiktirafan Kelayakan, Bahagian Latihan, of the PSD dated 11 October 1993 addressed to the 'Setiausaha Eksekutif, Persatuan Alumni Akauntan Internasional, Cawangan Malaysia' Kuala Lumpur. The title of this letter is 'Pengiktirafan Kelayakan'. This letter refers to an earlier letter written to the PSD by the said Setiausaha Eksekutif, Persatuan Alumni Akauntan Internasional, Malaysia, dated 1 October 1993. According to this letter of 11 October, a person who passes all the exams conducted by the Association of International Accountants, United Kingdom, is recognized by the PSD as having a qualification equivalent to a General Bachelor degree from a local university.

[16] Likewise here, the earlier letter of 1 October 1993 is not exhibited.

[17] The Chairman of the Examination Committee of the Institute, in his affidavits, avers that although no decision has yet been made in respect of the plaintiff's application (and the 45 other applications), nevertheless, there is no delay intended in making a ruling as to her eligibility. The Chairman explains that the vetting process of the application will take some time because as at 16 June 2003, there were 439 applications and the applicants have a variety of qualifications and that each of the applications have to be considered individually and on a case to case basis. He also explains that the Examination Committee, apart from processing, vetting and ruling on applications, has several other functions as enumerated by r 7 of the Malaysian Institute of Accountants Qualifying Examination Rules 2002. He further

states that the Institute only received the updated list of all qualifications recognized by the PSD in late March 2003. The list is voluminous and exceeds 200 pages.

[18] This Examination Committee that I have just mentioned is a Committee appointed by the Council pursuant to r 6 of the Malaysian Institute of Accountants Qualifying Examination Rules 2002. Among the main functions of this Committee are to register candidates for the MIAQ Examination, to determine and collect the registration and examination fees, and to approve the structure and content of the MIAQ Examination.

[19] Mr Porres Royan, the learned counsel for the defendant, submits that the action should be dismissed for two reasons.

[20] First, he argues that the suit is premature in that the present suit is filed too soon, that is to say, only just three weeks after the submissions of the application form by the plaintiff.

[21] Further, Mr Royan contends that the two PSD letters relied upon by the plaintiff do not support her contention that she is eligible to sit for the MIAQ Examination.

[22] In my judgment, I accept the argument of the defendant that the present suit by the plaintiff is premature. That the plaintiff is eager to sit for the examination is understandable. But it is rash and unreasonable for the plaintiff to file this action just three weeks after the submission of her application form, merely because there was no reply from the defendant. The defendant must be given reasonable time to process and evaluate the plaintiff's application and to reply to the plaintiff accordingly in due course. What is reasonable time is difficult for this court to prescribe. It depends on the circumstances of the particular case. The Institute has their own internal procedures to follow. Like all other organizations, it might have its own manpower, logistics and other problems. It might have to depend on the cooperation of other authority, for example, as in the present case, the PSD. But on the other hand the defendant as a statutory public authority has a duty to carry out its functions efficiently and in an expeditious manner. It cannot be sluggish. It cannot be slow. Now, having said all this I think the plaintiff should have waited, say, at least three months from the date of submitting her application before filing this suit.

[23] To my mind, the plaintiff's unsubstantiated allegation that the defendant purposely delay in making a ruling on her eligibility is unfair and mischievous and should not have been made.

[24] However, there is an additional ground as to why I am dismissing this action. In my judgment, I accept Mr Porres Royan's submission that the two PSD letters exhibited by the plaintiff do not support her case.

[25] The PSD letters were issued in 1986 and 1993, whereas s 15A(2) only came into force on 28 June 2001. This means the letters were issued by the PSD years before the introduction of s 15A(2). This being the case, the letters, therefore, have nothing to do with s 15A(2). The PSD did not have

in mind s 15A(2) when they issued these letters. Hence, these letters are irrelevant for the purpose of s 15A(2).

[26] In my view, any notification by the PSD (or by the Council) regarding any particular qualification recognized by it for the purpose of s 15A(2) must state clearly that such notification is for the purpose of s 15A(2); and must be a notification issued after the coming in force of s 15A(2). The principle of transparency requires that such notification should not only be made known to the Institute but must also be made known to the public at large. It should be made known to the public without any need for any member of the public to write to the PSD (or to the Council). In order to make it known to the public at large, the notification should be published in the Government Gazette.

[27] Accordingly, this action is dismissed with costs.

Action dismissed with costs.

Reported by AG Kalidas